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## COMMENTS ON "EMERGENCY PETITION"

UTC is the national representative on communications matters for the nation's electric, gas and water utilities and natural gas pipelines. UTC has been active participant in this proceeding, representing the views of many of the incumbent microwave licensees in the 2 GHz band, as well as the broader interests of utilities and pipelines in the use of new, emerging telecommunications technologies.

In its "Emergency Petition," Apple argues that: (1) the 1910-1930 MHz band should be allocated for unlicensed "nomadic" voice and data devices; (2) no unlicensed devices should be permitted to use the 1910-1930 MHz band until it is completely cleared of microwave stations nationwide; (3) no "non-nomadic" devices should be allowed to use the 1910-1930 MHz band; (4) an additional 20 MHz of unlicensed spectrum, preferably adjacent to the 1910-1930 MHz band, should be allocated for "non-nomadic" devices; and (5) two or more 10 MHz channels in the 1850-1990 MHz band should be reserved for at least five years and used to accommodate microwave incumbents displaced from both licensed and unlicensed PCS frequencies.

There are certain aspects of Apple's Petition with which UTC agrees; namely, it does not appear feasible to deploy unlicensed PCS devices in a band that is occupied by fixed microwave systems, and the 1910-1930 MHz band appears to be the most logical choice for an allocation to unlicensed devices due to the relatively few microwave paths licensed in that band.

However, UTC cannot agree with certain of Apple's arguments. First, UTC disagrees with Apple's position that additional spectrum should be specifically allocated for non-nomadic systems because these systems are capable of

being frequency coordinated.<sup>1/</sup> Second, UTC disagrees with Apple's request for reservation of at least 20 MHz of 2 GHz spectrum as a temporary relocation home for displaced microwave systems.

**A Separate Allocation for "Non-Nomadic"  
Devices Is Not Necessary**

In recommending a separate allocation for "non-nomadic" PCS devices, Apple is apparently assuming that (1) it will be possible to enforce a frequency coordination requirement in connection with the sale or use of unlicensed devices; (2) consumers will operate those devices on a non-interference basis and will re-coordinate before making any significant change in operating parameters; (3) the manufacturers of such devices can develop a funding mechanism for negotiating with incumbent microwave licensees; and (4) it will be possible to define "non-nomadic" devices in such a way as to effectively prohibit the early deployment of "nomadic" devices.

UTC raised these issues in its July 21, 1993, Comments on the "FCC Report and Recommendations of the Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management" (UTAM Report). In Reply Comments, UTAM largely acknowledged that there were many issues to be resolved

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<sup>1/</sup> "Emergency Petition," pp. 2 & 5-8.

before non-nomadic devices could be deployed in a band still occupied by microwave systems. For example, other than taking steps to incorporate UTAM, Inc. as a Delaware business corporation, UTAM was unable to report any significant progress in developing a plan for the coordinated deployment of unlicensed PCS devices. UTAM reported only that it has "explored a variety of possible sources of financing;<sup>2/</sup> it is "currently exploring options for determining UTAM, Inc.'s fee structure;"<sup>3/</sup> and it is "willing to explore" an additional technical requirement that unlicensed base stations would be disabled "if moved from their coordinated locations."<sup>4/</sup> Despite UTAM's oft-expressed desire to provide for the rapid deployment of unlicensed PCS devices, it has been ineffective in developing answers to some of the most fundamental issues surrounding that deployment.<sup>5/</sup> UTC therefore disagrees

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<sup>2/</sup> UTAM Report, p. 11.

<sup>3/</sup> UTAM Report, p. 13.

<sup>4/</sup> UTAM Report, p. 18.

<sup>5/</sup> UTC also notes that Apple itself has doubts "whether UTAM will fairly and adequately respond to the needs of all potential users of the unlicensed band." See "Petition for Reconsideration," filed September 13, 1993, by Apple Computer, Inc., in ET Docket No. 92-9, at p.8, n.16. UTC further notes that another potential manufacturer of unlicensed devices, and a member of UTAM, has requested permission to deploy up to 1,000 unlicensed wireless PBX systems without regard to UTAM's proposals for frequency coordination, labeling, and transmitter deactivation in the event of system relocation. See (continued...)

with Apple's assumption that wireless PBXs and other unlicensed "non-nomadic" PCS devices can be successfully deployed prior to band-clearing or that such devices should therefore be granted a separate allocation.<sup>5/</sup>

**A Temporary Home for "Retuned" Microwave Systems Should Not Be Established**

Finally, UTC disagrees with Apple's request for a five-year reservation of at least 20 MHz of spectrum in the 2 GHz band as a temporary home for displaced 2 GHz microwave systems. This request is premised on Apple's variously-labeled plan for "repacking," "restriping," "retuning," or "re-engineering" fixed microwave systems within the 2 GHz band in order to free-up spectrum for PCS.

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<sup>5/</sup>(...continued)

"Opposition of the Utilities Telecommunications Council," filed July 23, 1993, to the application of Northern Telecom, Inc. for experimental authorization (File No. 3714-EX-PL-93).

<sup>6/</sup> While acknowledging many of shortcomings of UTAM's proposals for early deployment of non-nomadic devices, Apple suggests that a frequency coordination procedure modeled after Section 21.100 of the Commission's Rules would allay microwave licensees' concerns by assuring them an active role in the coordination process. (Emergency Petition, pp. 7-8). However, a requirement for prior coordination notices will not ensure that manufacturers, vendors, or consumers actually conduct frequency coordination before they deploy new systems or reconfigure previously-installed systems.

Quite simply, Apple has not been forthcoming with its "repacking" plan, rendering it impossible to make a fair assessment of the impact such a plan might have on the 2 GHz transition. The Commission has adopted a carefully structured procedure designed to protect the incumbents' investment in communications systems, safeguard the reliability of those critical facilities, and promote the rapid reallocation of the 2 GHz band for emerging telecommunications technologies. UTC agrees with the Commission's assessment that Apple's two-step approach to clearing the 2 GHz band would "increase the overall cost of relocating the incumbent fixed microwave facilities; it would increase the cost to licensed emerging technology providers by increasing the number of fixed microwave facilities that they may have to pay to relocate; and it would burden incumbents with two relocations instead of one."<sup>2/</sup> Incumbent microwave users will be put to enough inconvenience in negotiating over relocation options without being forced into a "spectrum purgatory" while they await further Commission action to reallocate their temporary channels.<sup>3/</sup>

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<sup>2/</sup> Third Report and Order in ET Docket No. 92-9, FCC 93-351, released August 13, 1993, at para. 29.

<sup>3/</sup> UTC will address its additional concerns over "retuning" in its response to Apple's "Petition for Reconsideration" of the Third Report and Order in ET Docket No. 92-9.

**Conclusion**

In conclusion, UTC agrees with Apple's "Emergency Petition" to the extent it highlights the difficulties of coordinating unlicensed PCS devices in bands still occupied by fixed microwave users. However, the Commission must reject Apple's last-minute pleas for special spectrum allocations necessary to support its microwave "retuning" proposal.

WHEREFORE, THE PREMISES CONSIDERED, the Utilities Telecommunications Council respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

UTILITIES TELECOMMUNICATIONS  
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# CERTIFICATE OF SERVICE

I, Kim B. Winborne, hereby certify that I have caused to be sent, this 15th day of September, 1993, by first class mail, postage prepaid, copies of the foregoing "Comments on Emergency Petition," to each of this following:

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